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Judiciary Committee
Public Hearing
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Raised Bill No. 1211 **AN ACT CONCERNING POSTJUDGMENT INTEREST**

TESTIMONY OF ATTORNEY RENÉE CANNELLA OF THE CANNELLA LAW FIRM,
STAMFORD, CT AND TREASURER OF THE CONNECTICUT CREDITOR BAR
ASSOCIATION IN SUPPORT OF RAISED BILL NO. 1211

Chairman Fox, Chairman Coleman and Distinguished Members of the Judiciary
Committee:

As a practicing member of the bar of the State of Connecticut I represent businesses of all sizes in commercial and collections litigation. Events in recent years have made it necessary for the clarification of C.G. S. §52-536d(e) which provides for post judgment interest. Raised Bill No. 1211 provides this essential clarification.

A. By way of background:

(1) This statute addresses the situation where a judgment has been entered against a party who owes money to another party and is ordered to pay in installment payments rather than in a lump sum. The statute has been in effect since 1983 and currently reads:

(e) Interest on a money judgment *shall* continue to accrue under any installment payment order on such portion of the judgment as remains unpaid.

Rules of statutory construction require that the use of the word "shall" means that the imposition of interest on judgments with installment orders is obligatory not discretionary. This statute has neither been repealed nor amended. For over 20 years this statute was given full effect and therefore it was a given that in any case where a defendant has been given an installment payment order, most often \$35.00 per week or less regardless of the sized of the debt, interest automatically accrued until such time as the debt was paid in full.

(2) By enacting this statute the legislature was properly acknowledging that (a) there is a time value to money and (b) interest provided the only incentive to judgment debtors to pay the debt sooner rather than later.

(3) Although the statute was neither repealed nor amended, in 2009 the judicial branch, relying on an appellate court opinion, Urich V. Fish 112 Conn. App. 837 (2009) which did not have anything to do with C.G. S. §52-536d(e) or installment payment orders started advising small claims magistrates that the granting of post judgment interest was

(a) Completely within their discretion even where an installment payment is ordered and
(b) had to be specifically claimed by the plaintiff in the complaint.

(4) The judicial branch then also amended forms relating to post judgment remedies such as bank executions to require that post judgment interest will only be added in matters in which the court specifically awarded post judgment interest. which not only affected post Urich cases but also affected pre Urich cases.

B. Practical Effect Of Judicial Branch's Edict:

(1). Abrogation of C.G.S. §52-536d(e): The Judicial Branch's broad reading of the Urich decision effectively abrogated C.G.S. §52-536d (e), leaving it impotent and without purpose.

(2) Businesses in our state are being forced to provide what are essentially interest free loans to individuals and businesses who have already benefited from that business's services and/or products.

(3) Small Claims Magistrates are taking full advantage of the discretion with which they have been bestowed by the judicial branch, while fully ignoring the law set by the legislative branch often leaving businesses in a terrible economic position. If these businesses do not get paid for their services and products, they cannot afford to continue functioning fully. The effect of this of course leads to layoffs, leading to additional unemployment. So while the magistrates see themselves as championing for the consumer, ultimately it is the consumer who will lose.

(2) Superior Court Judges: Superior Court judges did not know why we are asking them to order post judgment interest because as far as they are concerned, pursuant to statute, where there is an installment payment order, interest accrues as of right. We had to explain to them that although the law was not changed, the forms were changed which require a specific showing of post judgment interest orders.

(3). Judicial Branch Forms for Post Judgment Executions: Following Urich the Judicial Branch revised Form JD-CV-24(Financial Institution Execution) and JD-CV-3(Wage Execution). These forms are used both in the Superior Court as well as Small Claims. These forms now include the following:

☐ Check if applicable
postjudgment interest was ordered by the court

Prior to these forms being revised there was language on the form instructing the marshal to collect not only the unpaid judgment, but also "post judgment interest on the unpaid amount of said judgment from its date until the time when this execution shall be satisfied."

From a practical standpoint, the change in the forms means that there has been a retroactive effect on post judgment creditors effectively altering their vested right to post judgment interest. Where judgment was rendered years ago, at a time when C.G.S. § 52-356d was being honored, and post judgment interest was a given on an installment payment order, when we now seek a bank or wage execution due to a default by a judgment debtor, according to the Judicial Branch a judgment creditor is not entitled to post judgment interest unless he can say that it was court ordered. The majority of the time there will not be such an order in the court file because judges and counsel were performing their duties with the accepted notion that there was a statute in effect taking care of this issue.

In conclusion:

Long ago our legislature recognized the efficacy and necessity for post judgment interest. In light of the recent changes which effectively nullified the existing statute it is necessary for the legislature once again to take control of this issue and clarify that they meant what they said when initially enacting the law.

Thank you,

Renée Cannella